

Under the Graphic Arts Machinery and Equipment Exemption, machinery and equipment used primarily in graphic arts production may be purchased free from Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.325. (This is a GIL.)

December 11, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 5, 1998. We regret the delay in our response. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, we respectfully request that the Illinois Department of Revenue ('DOR') issue a general information letter interpreting the application of the Illinois Retailer's Occupation Tax ('ROT') and Use Tax ('UT') to our client's purchase and use of certain tangible personal property as further described below. Please note that our client is not currently under audit and is not involved in litigation with the DOR on this, or any other matter.

**Statement of Material Facts**

1. Our client is an Illinois domiciled commercial printer engaged in the business of graphic arts production as described in 86 Ill. Admin. Code Section 130.2000.
2. Our client purchases and uses certain tangible personal property to directly produce printing plates that are used in its graphic arts production process.
3. The tangible personal property at issue is 'multiple use' film. This film is used many times over a period of several years to directly produce printing plates.

**Issue Presented**

Whether tangible personal property used multiple times over a period of several years to directly produce printing plates qualifies for the graphic arts machinery and equipment exemption provided in 35 ILCS 120/3-5(4), 35 ILCS 105/3-5(6) and 86 Ill. Admin. Code Section 130.325.

**Conclusion**

Tangible personal property used multiple times over a period of several years to directly produce printing plates qualifies for the

graphic arts machinery and equipment exemption provided in 35 ILCS 120/3-5(4), 35 ILCS 105/3-5(6).

### **Pertinent Authorities**

#### *IMPOSITION OF THE USE TAX.*

35 ILCS 105/3 provides, in part:

A tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer...'

#### *R.O.T. NONTAXABILITY EXCEPTION*

35 ILCS 105/3-65 provides:

If the seller of tangible personal property for use would not be taxable under the Retailer's Occupation Tax Act despite all elements of the sale occurring in Illinois, then the tax imposed by this Act (Use Tax) does not apply to the use of the tangible personal property in this State. (parenthetical added).

86 Ill. Admin. Sec. 150.101 provides, in part:

(c) [I]f the seller of tangible personal property for use would not be taxable under the Retailer's Occupation Tax Act (Ill. Rev. Stat. 1989 Ch. 120, pars. 440 et seq.) despite all elements of the sale occurring in Illinois, then the tax imposed by the Use Tax Act shall not apply to the use of such tangible personal property in this State.

#### *ROT AND UT EXEMPTION FOR GRAPHIC ARTS PRODUCTION*

35 ILCS 120/2-5(4) and 35 ILCS 105/3-5(6) provide an exemption from the ROT and UT for machinery and equipment used in primarily in graphic arts production. The following regulation clarifies the scope of the exemption afforded by these statutes.

86 Ill. Adm. Code Sec. 130.325 provides, in part:

a) Notwithstanding the fact that sales may be at retail, the Retailer's Occupation Tax does not apply to the sale of machinery and equipment, including repair and replacement parts therefor...to be used primarily in graphic arts production....

b) ...

2) Machinery means major mechanical machines or major components of such machines contributing to graphic arts production. Equipment means any independent device or tool separate from any machinery but essential to the graphic arts production process; or any sub-unit or assembly comprising a component of any machinery or auxiliary, adjunct or attachment or parts or machinery. The exemption does not include hand tools, supplies, lubricants,

adhesives or solvents, ink, chemicals, dyes, acids or solutions, fuels, electricity, steam or water, items of personal apparel such as gloves, shoes, glasses, goggles, coveralls, aprons, and masks, such items as negatives, one-time use printing plates as opposed to multiple use cylinders or lithographic plates, dies, etc. which are expendable supplies....

c) ...

3) By way of illustration and not limitation, the following activities will generally be considered to constitute an exempt use:

A) Machinery and equipment to directly produce typesetting, negatives and plates including final photo-composition and color separate processes.

#### *TAXABILITY DETERMINED BY USE OF ITEM PURCHASED*

Material Service v McKibbin, 380 Ill. 226; 43 N.E.2d 939 (IL 1942) directly speaks to the test to be applied in answering the issue presented. The court, in considering the incidence of ROT on construction contractors relative to their sale and installation of fixtures and materials, held in pertinent part:

The character of the use a purchaser makes of an article of personal property is important in determining whether it was a sale to him for his use or consumption...**It is the use and purpose for which the article has been purchased that controls.** (emphasis added).

In PLR-94-0009 the DOR states:

No piece of graphics machinery, in and of itself, qualifies for the exemption. Rather, this **determination is based upon how the equipment is used** in the graphics arts production process. (emphasis added).

PLR 93-0308 reaffirms:

For your general information we have enclosed a copy of 86 Ill. Admin. Code 130.325, regarding the Graphic Arts Machinery Equipment Exemption....**Whether a particular piece of equipment will qualify for exemption depends upon how it is used.** (emphasis added).

#### *TAXABILITY OF 'FILM' USED BY GRAPHIC ARTISTS*

DOR rulings that discuss the taxability of 'film' in the context of the graphic arts exemption have not addressed the use of the film by the taxpayer. Rather, these PLRs merely presume that all film is a 'one-time use' supply item. PLR 90-0569 is an illustrative example. This PLR fails to consider the use of the film and declares by fiat that the film is a 'consumable supply.'

When the use of the items was considered, other DOR rulings have found similar property exempt. In PLR 92-0230 the DOR considered the taxability of a two-time preparation workstation used by a graphic arts business. In this instance, the DOR did consider the use of the property and found it to qualify for the graphic arts exemption 'because you have indicated that it *performs the functions* specified in Section 130.325(c)(3)(A), i.e., it directly produces typesetting, negatives, and plates including final photocomposition and color separation process.' Likewise, upon examining the use of certain equipment, the DOR ruled that a graphic arts system qualifies for the graphic arts machinery and equipment exemption because the equipment was used to directly produce a printing plate. (PLR 92-0703).

## **Discussion**

### *SUMMARY OF APPLICABLE AUTHORITIES*

1. There exists an exemption from the ROT and the UT for certain purchases for use primarily in graphic arts production. 35 ILCS 120/2-5(4), 35 ILCS 105/3-5(6).
2. The exemption extends to machinery and equipment used to directly produce plates. 86 Ill. Adm. Code Sec. 130.325(c)(3)(A).
3. The exemption extends to 'multiple use' items but does not extend to 'single use' supply items. 86 Ill. Adm. Code Sec. 130.325(b)(2).
4. It is the use of the property purchased, and not the nomenclature or classification, that is determinative in deciding taxability. *Material Service*, supra; and PLRs 94-0009, 93-0308, 920703, and 92-0230.
5. No authority directly addresses the taxability of 'multiple use' film repeatedly used to directly produce plates over a substantial period of time.

### *APPLICATION OF FACTS TO THE STATED AUTHORITIES*

The issue presented for consideration by the DOR is whether the 'multiple use' film purchased by our client and repeatedly used to directly produce plates qualifies for exemption under 35 ILCS 120/2-5(4) and 35 ILCS 105/3-5(6). The facts indicate that our client is a graphic artist. The facts further indicate that our client purchase multiple use film for the purpose of directly producing plates. Additionally, the facts indicate that our client retains and re-uses the film to produce plates from time to time over the course of several years.

In sum, our client *uses the film to perform the functions described in* 86 Ill. Admin. Code Section 130.325(c)(3)(A) - to directly produce plates. Furthermore, the film is *not* a 'consumable supply' due to its repeated use over an extended period of time. Therefore, our client's purchase and use of the 'multi use' film to directly produce plates over a period of years qualifies for the exemption afforded by 35 ILCS 120/2-5(4) and 35 ILCS 105/3-5(6).

*RULING REQUESTED*

On behalf of our client, we respectfully request that the DOR issue a ruling indicating that our client's purchase of film for use multiple times over a period of several years to directly produce printing plates qualifies for the graphic arts machinery and equipment exemption provided in 35 ILCS 120/3-5(4), 35 ILCS 105/3-5(6).

Thank you for your consideration of this important matter. If you require any further information regarding the issues addressed in this letter, please feel free to contact me at ####.

For your general information we have enclosed a copy of 86 Ill. Adm. Code 130.325, regarding the Graphic Arts Machinery and Equipment Exemption. Under this exemption, machinery and equipment used primarily in graphic arts production may be purchased free from Retailers' Occupation Tax liability. We have also enclosed copies of 86 Ill. Adm. Code 130.1401 and 130.1405, regarding the Resale Exemption. Purchasers may make purchases without incurring Retailers' Occupation Tax if the tangible personal property is being purchased for resale and not for use or consumption.

"Graphic arts production" means printing by one or more of the common processes of printing or graphic arts production services as those processes and services are defined in Major Group 27 of the U.S. Standard Industrial Classification Manual. These types of common processes of printing include printing such as by letterpress, lithography, gravure, screen, engraving, and flexography. Print trade services such as typesetting, negative production, plate production, bookbinding, finishing, and loose-leaf binder production are examples of services which are included in the definition of graphic arts production.

Consumable supplies, such as chemicals used to clean plates and presses and film, are generally purchased for use and do not qualify for the resale exemption. It is our understanding that film, once exposed, retains the image permanently. While the resulting image may be used multiple times, the film is still a consumable supply.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.

